

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

NORTH ALASKA SALMON COMPANY
(a corporation),

Appellant,

vs.

PEDER LARSEN,

Appellee.

BRIEF FOR APPELLANT.

Appeal from Decree in Admiralty Awarding Appellee (Libelant)
Damages Against Appellant North Alaska Salmon Company
in the Sum of \$506 With Interest for Breach of
Contract of Good Treatment.

D. FREIDENRICH,
Proctor for Appellant.

Filed this.....day of October, 1914.

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FRANK D. MONCKTON, Clerk.

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Statement.

Libelant shipped on the company's vessel "Olympia" under Articles of Agreement, by the terms whereof he was to enter into the employment of the company in the capacity of seaman, fisherman, and trapman, also to work on boats, lighters, steamers and in any other capacity as directed by the company's superintendent during the salmon

fishing season of 1912, in Behring Sea district, Alaska.

While in that employment, on the 12th of July, 1912, he sustained an injury to his knee. He was at work at the time on a lighter which was alongside the company's dock on Brown River at Locanock; the work he was doing was throwing fish into a bucket to be hoisted up to the wharf. As the bucket started, it swung towards him; he made a quick movement and twisted his knee. He was not hit by the bucket.

The breach of good treatment according to the libel, consisted, (1) in the failure of the company to furnish him with proper medical care and attention, and (2) compelling him, after the injury, to work on the "Olympic".

It is only in these two particulars, that the company is alleged to have failed to furnish him good treatment. As to everything else connected with his treatment, no complaint is made.

As to the first, it is averred that he did not and could not receive proper medical and surgical care and attention at Locanock and that the company should have sent him to Nakneck or to Koggiung or to Dutch Harbor, where, it is alleged, he could have received proper medical and surgical care and attention.

It is also averred, that on or about the 24th day of August, 1912, he requested the company's superintendent to send him to Nakneck, or to Koggiung,

for treatment, but that the superintendent failed and neglected to send him to either of those places.

The Evidence.

After the injury he was taken to the bunkhouse; he was given the choice of being taken to Hallerville, where the hospital was located, but he did not think it was necessary. Dr. Hassett was the company's physician, employed for the trip. He was at Hallerville, which was about 3 miles from Locanock, and was immediately sent for. He came down and attended libelant that evening. He painted his knee with iodine and gave him some liniment (Record, p. 35). He continued thereafter to treat him. His knee showed no sign of injury and Dr. Hassett could not see anything the matter with it. The patient was dissatisfied with the doctor's treatment. He struck the doctor in the face and licked him (Record, pp. 35, 56 and 57). As to the qualifications of the doctor, the superintendent of the company by whom he was employed looked up his reputation and got recommendations from many people. He had two state licenses; one of them a New York license (testimony of C. P. Hale, Record, p. 58).

As to whether or no libelant asked to be sent elsewhere for treatment, there is a conflict in the evidence. Libelant testified that he asked Mr. Hale to send him anywhere to a doctor, but he did not mention any particular place (Record, p. 37).

Mr. Hale testified that he had a talk with libelant after the latter had whipped the doctor. That he offered to send him to Koggiung and to let him have the launch. That he told the man who ran the launch to be ready to take him in the morning and he told libelant he could go any time he wanted to, and said to him that so long as our doctor could not satisfy him, he was perfectly willing that he should go and see the other doctor (Record, p. 56).

Mr. Hale is corroborated by Alex. Young, who testified that when libelant said he would like to see another doctor and that there was another doctor at Koggiung, Mr. Hale said to the bookkeeper, "All right, you get the launch and take this man to Koggiung to see the doctor" (Record, pp. 51 and 52). This was said in the presence of libelant (Record, p. 53).

Upon libelant's return to San Francisco, he consulted Dr. Long, who found that he had inflammation of the knee joint; that the sac under the knee-cap was badly distended with fluid. The doctor kept him in bed a month or six weeks, applied hot compresses and massaged the knee joint (Record, pp. 18 and 19).

As to the complaint that he was compelled to work on the "Olympic", libelant testified (Record, p. 39) that he went on board the "Olympic" about the 1st of August and mended sails. He was engaged in that work until the 23rd or 24th of August. He was not compelled to do any work on the ship coming down (Record, p. 41).

Captain Evans of the "Olympic" testified that libelant worked a little on the vessel while at Bristol Bay repairing sails. That he had no orders to go to work, but did so voluntarily.

The Court below found upon the evidence in favor of libelant, and awarded him damages in the sum of \$506, with interest from December 21, 1912, the date of filing the libel.

The errors relied on by appellant are:

(1) The Court erred in holding that the cause of action is within the admiralty and maritime jurisdiction of the Court;

(2) That libelee did not furnish libelant with proper care and attention;

(3) That libelant is entitled to recover damages for breach of contract of good treatment;

(4) That libelant is entitled to damages in the sum of \$506;

(5) That libelant is entitled to interest on the amount of damages awarded from the time of filing the libel.

I.

THE CAUSE OF ACTION IS NOT WITHIN THE ADMIRALTY JURISDICTION OF THE COURT.

Admiralty jurisdiction in case of contracts is limited to those purely maritime.

The Orleans v. Phoebus, 11 Pet. 175.

It has no jurisdiction over contracts for the hire of seamen, except in cases where the service is substantially performed upon the sea or upon waters within the ebb and flow of the tide.

The Thomas Jefferson, 10 Wheaton 428.

Maritime contracts are such as relate to commerce and navigation.

Edwards v. Elliott, 21 Wall. 532.

A contract for building a schooner is not a maritime contract.

“Shipbuilding”, says the Court, “as ordinarily conducted, is an employment on land.”

“No reason is perceived why a contract to build a ship any more than a contract for the materials of which a ship is composed, or for the instruments or appurtenances to manage or propel the ship should be regarded as maritime.”

Edwards v. Elliott, 21 Wall. 532.

Libelant was employed by libelee in its business of canning salmon. The employees, including libelant, were engaged at San Francisco, and carried on libelee’s vessel to its canneries in Alaska, and were brought back at the close of the fishing season. The services to be performed by the employees were that of seaman, fisherman, beachman, trapman and such other services as may be required by the company’s superintendent.

After the “Olympia” reached Bristol Bay, libelant was sent ashore. His services as seaman on the

“Olympia” on the up-trip had terminated. At the time of the injury, he was at work on a lighter fastened to the wharf at Locanock. The work he was doing was within the services required of him by his contract of employment. The contract for that work, we submit, is not a maritime contract. If he had sustained an injury through the company’s fault while in performance of that work, an action for damages could not have been maintained in a Court of Admiralty, any more than it could, if he had sustained such injuries while at work on shore. This action is for breach of contract of good treatment, and the breach, if it occurred at all, was upon land and not upon the high sea or upon waters within ebb and flow of the tide.

It is a settled rule of maritime law, that a seaman who becomes sick or is maimed *while in the service of the ship* without his own fault, is entitled to be cared for at the expense of the vessel.

The Osceola, 189 U. S. 158;

The Iroquois, 194 U. S. 240, affirming 55 C. C. A. 497.

The facts of this case, however, do not bring it within that rule of maritime law, because at the time of the injuries, libelant was not in the service of the ship nor in the performance of any work of a maritime nature.

II.

THE FINDING THAT LIBELEEE DID NOT FURNISH LIBELANT
WITH PROPER CARE AND ATTENTION IS NOT SUSTAINED
BY THE EVIDENCE.

The Court below, in its opinion, says (p. 91) :

“I am satisfied from the evidence herein that the libelee did not furnish libelant with proper medical attention and care, after his injuries, as the doctor at all times, seemed to regard libelant’s injuries as trifling, and libelant himself as a malingerer. It is evident, however, that the injury to libelant’s knee was a grave one, which, if properly treated, would not have resulted so seriously.”

The company is held answerable in damages for the failure of the doctor to properly treat libelant’s knee. It is the duty of a shipowner to provide proper medical treatment and attendance for seamen suffering injury in the service of the ship, but the question as to what constitutes a performance of these duties must be determined with reference to the facts of each particular case.

Krelly v. The Kenilworth, 144 Fed. 376.

Dr. Hassett had been employed by libelee for the trip. He was a regularly licensed physician, and came well recommended. There is no evidence in the record tending to show that he was incompetent. His failure to discover any injury to the knee of libelant does not of itself show incompetency. The utmost that can be required of the company is to exercise reasonable judgment in providing proper medical treatment and attendance, but for the mis-

take, if any, of the doctor, there is, we submit, no rule of law which will hold the company liable in damages. There is no evidence in the record tending to show that the company was negligent in employing Dr. Hassett as physician for the trip, and no such issue was tendered by the libel.

III.

THE COURT ERRED IN AWARDING LIBELANT DAMAGES FOR THE LOSS OF EARNINGS AFTER HIS DISCHARGE FROM THE VESSEL OR FOR HIS EXPENSES AFTER SUCH DISCHARGE.

The Court fixed the damages at \$506, made up as follows: \$86 for doctor's fees, \$15 for medicines, and \$405, the amount libelant could have earned during the period of 4½ months after his discharge from the vessel (pp. 91-92).

The obligation of the vessel to support and cure a seaman taken sick or receiving injuries in the service of the ship, does not extend beyond the termination of his contract and his return to the port of discharge.

The Tammerlane, 47 Fed. 822;

The J. F. Card, 43 Fed. 92.

Krelly v. The Kenilworth, decided by the United States Circuit Court of Appeals, Third Circuit, 144 Fed. 376, was an action for breach of contract of good treatment.

Discussing the question of damages recoverable in such action, the Court said:

“In the case of *Osceola*, 189 U. S. 175, it was held that the vessel and her owners are liable in case a seaman is wounded, in the service of a ship, to the extent of his maintenance and cure, and to his wages, at least as long as the voyage is continued, and the Court quotes the language of Mr. Justice Storey, in *Reed v. Canfield*, 1st Sumn. 202: ‘The seaman is to be cured at the expense of the ship, of the sickness or injury sustained in the ship’s service. *It must be sustained by the party while in the ship’s service, and he is not to receive any compensation or allowance for the effects of the injury*, but so far, and so far only, as expenses are incurred in the cure, whether they are of a medical or other nature, for diet, lodging, nursing or other assistance, they are a charge on and to be borne by the ship. The sickness or other injury may occasion a temporary or permanent disability, but that is not a ground for indemnity from the owners. They are liable only, for expenses necessarily incurred for the cure, and when the cure is completed, at least so far as the ordinary medical means extend, the owners are freed from all further liability. They are not, in any just sense, liable for consequential damages.’ ”

The damages awarded by the Court below included \$405 as and for the amount which libelant could have earned during the period of 4½ months after his discharge from the vessel. This item is clearly consequential damages for which we submit, the ship or the owners are not liable.

It is alleged in the libel that, by the terms of the Articles of Agreement, libelant, while serving libelee

thereunder, was to receive medical and surgical attendance and medical and surgical necessities free of charge (Record, p. 6). The Articles were introduced in evidence upon the trial marked "Libelant's Exhibit 1", and pursuant to stipulation between the parties hereto, the original has been transmitted to this Court with the transcript on appeal, and is on file herein. The Articles do not contain any agreement that libelee was to receive medical or surgical attendance. The action, therefore, is not based upon any express agreement to that effect, but is based upon the rule of maritime law.

It is respectfully submitted that the decree appealed from should be reversed and that libelee have judgment for its costs.

Dated, San Francisco,
October 19, 1914.

D. FREIDENRICH,
Proctor for Appellant.

